

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Constitutional Petition No.D-882 of 2016.

PRESENT:

**Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Muhammad Iqbal Mahar,**

Petitioner : Mst. Karma, through Mr. Bahadur Ali Shahani,
Advocate.

Respondent : The State & others, through Mr. Sardar Ali Shah,
Assistant Prosecutor General.

Date of hearing : 21.09.2016.

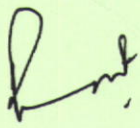
Date of order : 21.09.2016.

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Constitutional Petition, the petitioner has assailed the order dated 08.6.2016, whereby Crl. Miscellaneous Application bearing No.319/2016, filed by the petitioner for lodging of F.I.R, was disposed of by the learned Sessions Judge/Ex-Officio Justice of Peace, Shikarpur.

2. Briefly stated the relevant facts of the case are that the petitioner filed aforementioned criminal miscellaneous application under Section 22-A & B, Cr.P.C before the learned Sessions Judge/Justice of Peace, Shikarpur, seeking directions to SHO P.S Garhi Yasin for registration of her F.I.R against the proposed accused after recording her statement, stating therein as under:

“That, on dated: 27.01.2016 petitioner with her husband, children and PWs namely Mst. Kazbano Unar and Mst. Hajani Unar were present and sleeping in the house of applicant, meanwhile early in the morning at about 5 hours, they heard noise of the people on which all they woke up from the sleep, and saw that door of the house room of applicant was opened by proposed accused, namely, 1. Hajan Gadani in police uniform, armed with K.K, 2. Mir Hassan Jatoti in black dress, armed with K.K, 3.



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Munir Hussain Jatoi in black dress, armed with K.K, 4. PC Hidayatullah Ansari in police uniform, armed with K.K, 5. PC Shams Dayo in police uniform, armed with K.K, 6. PC Amjad Ali Mangi in police uniform, armed with K.K, 7. Muhammad Ismail in white dress, armed with gun, 8. Rahimuddin in blue colour dress, armed with gun, and 10/12 unidentified accused in police uniforms and civil dresses, armed with deadly weapons, who will be identified if seen again, forcibly entered into the house room of the applicant on the force of deadly weapons and controlled over the applicant party and directed them to remain silent and then started beating the applicant party, they asked the reason from the proposed accused, who did not reply; meanwhile, proposed accused PC Shams Dayo and PC Amjad Ali Mangi took out two pairs of gold earrings of two tola of gold worth Rs.110,000/-, one lady's gold chain of half tola of gold worth Rs.27,000/-, Rs.18000/- cash with one licensed repeater on the force of weapons, on which applicant party gave them names of Holy Quran but they turned into deaf, meanwhile proposed accused Hajan Gadani asked to rest of proposed accused that, Zafarullah is a criminal, so kill him, on which at about 6.30 hours at morning time proposed accused Munir Hussain Jatoi made straight fire upon Zafarullah on his left hand, then applicant party raised cries, and proposed accused Mir Hassan Jatoi made straight fire upon the right leg's thigh of Zafarullah and proposed accused PC Hidayatullah gave kick blow to Zafarullah and aimed his K.K towards the applicant party and asked that if they will not remain silent, they will be killed by his hand, thereafter, proposed accused Hajan Gadani made straight fire upon Zafarullah on his face who fell down on the earth and died within sight of applicant party." 195

3. The learned Sessions Judge.Ex-Officio Justice of Peace, Shikarpur disposed of the aforementioned criminal miscellaneous application vide order dated 08.6.2016, leaving the petitioner at liberty to file direct complaint in the competent Court of law, if she desires so.

Rmt.

It is against this order, the instant Constitutional Petition has been preferred by the petitioner/applicant.

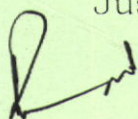
4. We have heard the learned Counsel for the petitioner and learned APG appearing for the State and perused the material available on record.

5. Mr. Bahadur Ali Shahani, the learned Counsel for the petitioner, has mainly contended that the learned Sessions Judge/Ex-Officio Justice of Peace did not consider the fact that from the facts disclosed by the petitioner in her criminal miscellaneous application, a prima facie case of murder of her husband has been made out and in such circumstances the SHO concerned is duty bound to record the statement of petitioner and incorporate the same into book of 154, Cr.P.C. He has further submitted that although the petitioner has the remedy to file a direct complaint against the proposed accused but the same cannot be a substitute of an F.I.R, hence the learned Justice of Peace acted utterly against the law and passed the impugned order erroneously, which is liable to be set aside.

6. On the other hand, Mr. Sardar Ali Shah, learned APG, has supported the impugned order.

7. We have given due consideration to the contentions of learned Counsel for the petitioner and learned APG.

8. There can be no cavil to the proposition that once the allegation with respect to the commission of a cognizable offence is communicated to police, the police is duty bound to register a case; and in case of refusal or resorting to delaying tactics, the aggrieved person is well within his rights to approach the Justice of Peace under Section 22-A, Cr.P.C, with a prayer for registration of the case, and if the Justice of Peace comes to the conclusion that a cognizable offence is




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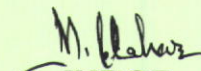
apparent from the data available on the record, he can pass an order for registration of the F.I.R. As such, the Justice of Peace is saddled with the administrative duty to redress the grievances of the complainants aggrieved by refusal of police officer to register their reports. However, ¹⁹⁹ he is not authorized to assume the role of investigating agency or prosecution. Even minute examination of the case and fact finding is not included in the function of the Justice of Peace.

9. So far the instant case is concerned, apparently, the findings of the learned Justice of Peace while refusing to redress the grievances of the petitioner, are erroneous for the reason that the information conveyed by the petitioner prima facie discloses the commission of a cognizable offence. As a consequence, there was no option for the learned Justice of Peace but to pass a direction to police authority concerned for registration of the F.I.R.

10. For what has been discussed above, we are of the considered view that the learned Justice of Peace has committed serious error while passing the impugned order, which is hereby set aside and instant petition is allowed as prayed. Consequently, the SHO P.S Garhi Yasin is directed to record the statement of the petitioner under Section 154, Cr.P.C in her verbatim and thereafter if any cognizable offence is made out, he shall proceed further in accordance with law.

11. This Constitution Petition was allowed by us by short order passed on 21.9.2016 and above are the reasons in support thereof


JUDGE 19/12/2016


JUDGE